

# State of South Dakota

## EIGHTY-EIGHTH SESSION LEGISLATIVE ASSEMBLY, 2013

915U0589

### SENATE BILL NO. 195

Introduced by: Senators Rhoden, Begalka, Brown, Frerichs, Holien, Kirkeby, Krebs, Lederman, Lucas, Maher, Monroe, Olson (Russell), Rampelberg, Tidemann, and Vehle and Representatives Solum, Bartling, Bolin, Cronin, Duvall, Feickert, Gibson, Gosch, Greenfield, Hawks, Hawley, Heinemann (Leslie), Heinert, Hunhoff (Bernie), Killer, Lust, Magstadt, Otten (Herman), Parsley, Peterson, Rounds, Schoenfish, Soli, Tyler, Werner, and Wismer

1 FOR AN ACT ENTITLED, An Act to establish certain incentives for wind energy facilities, to  
2 revise the amount that may be rebated for the gross receipts tax on electricity produced on  
3 wind farms, and to declare an emergency.

4 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF SOUTH DAKOTA:

5 Section 1. Terms used in this Act mean:

- 6 (1) "Construction date," the first date excavation, demolition, or construction begins for  
7 a project;
- 8 (2) "Department," the Department of Revenue;
- 9 (3) "Person," any individual, firm, copartnership, joint venture, association, cooperative,  
10 limited liability company, limited liability partnership, corporation, estate, trust,  
11 business trust, receiver, or any group or combination acting as a unit;
- 12 (4) "Project," the construction of a wind energy facility at a single site;
- 13 (5) "Project cost," the amount paid in money, credits, property, or other money's worth



1 for a project;

2 (6) "Secretary," the secretary of the Department of Revenue;

3 (7) "Wind energy facility," any new facility or facility expansion that:

4 (a) Consists of a commonly managed integrated system of towers, wind turbine  
5 generators with blades, power collection systems, and electric interconnection  
6 systems, that converts wind movement into electricity and any new or  
7 upgraded electric transmission line and associated facilities; and

8 (b) The construction of which is subject to contractors' excise tax pursuant to  
9 chapter 10-46A or 10-46B.

10 Section 2. For the purposes of this Act, to qualify for the refund, the project shall consist of  
11 a single project rather than an ongoing, systematic process of upgrading, retooling, or  
12 modernizing an existing wind energy facility.

13 Section 3. As provided in this Act, any person holding a permit issued pursuant to section 5  
14 of this Act may apply for and obtain a refund or credit of the sales or use tax imposed and paid  
15 by such person under the provisions of chapters 10-45 or 10-46 and the contractors' excise tax  
16 imposed and paid under the provisions of chapter 10-46A or 10-46B. The amount of the tax  
17 refund for a wind energy facility shall be a percentage of the taxes paid, as follows:

18 (1) For sales and use tax imposed by chapters 10-45 and 10-46, there shall be a refund  
19 of twenty-five percent of the taxes paid pursuant to these chapters; and

20 (2) For contractors' excise tax imposed by chapters 10-46A and 10-46B, there shall be  
21 a refund of one hundred percent of the taxes paid pursuant to these chapters.

22 Section 4. The refund of taxes pursuant to section 3 of this Act pertains only to project costs  
23 incurred and paid after January 1, 2013, up to and including thirty-six months from the  
24 construction date.

1       Section 5. Any person desiring to claim a refund pursuant to this Act shall apply for a permit  
2       from the secretary prior to or within ninety days after the construction date. The application for  
3       a permit shall be submitted on a form prescribed by the secretary. A separate application shall  
4       be made and submitted for each project. Upon approval of the application, the secretary shall  
5       issue a permit entitling the applicant to submit refund claims as provided by sections 6 and 7  
6       of this Act. Such permit or refund claims are not assignable or transferable except as collateral  
7       or security pursuant to chapter 57A-9. However, the secretary may permit the assignment or  
8       transfer of a permit and refund claim if the initial permit holder entity reorganizes into a new  
9       entity, if the new entity and the initial entity share common ownership and the reorganization  
10      was completed solely for a legitimate business purpose. The new entity shall file with the  
11      department an amended application for permit.

12      Section 6. Any claim for refund shall be submitted on forms prescribed by the secretary and  
13      shall be supported by such documentation as the secretary may require. The secretary may deny  
14      any claim where the claimant has failed to provide information or documentation requested or  
15      considered necessary by the secretary to determine the validity of the claim.

16      Section 7. Any person issued a permit pursuant to this Act shall submit a claim for refund  
17      to the department no more frequently than on or before the last day of each month and no less  
18      frequently than on or before the last day of each month following each calendar quarter. The  
19      secretary shall determine and pay the amount of the tax refund within ninety days of receipt of  
20      the claim for refund. However, no refund claim may be paid until on or after the construction  
21      date. Ninety-five percent of the amount of refund shall be paid to the claimant in accordance  
22      with §§ 10-59-22 and 10-59-23, and five percent shall be withheld by the department. No  
23      interest may be paid on the refund amount. The secretary shall pay the refund by electronic  
24      funds transfer.

1       Section 8. No claim for refund pursuant to this Act may be considered by the department if  
2       the claim for refund is received twelve months after the thirty-six month time period set by  
3       section 4 of this Act. Moreover, any such claim is barred from any future refund eligibility.

4       Section 9. No document or record in support of any claim for refund may be considered by  
5       the department if the document or record in support of any claim for refund is received twelve  
6       months after the thirty-six month time period of section 4 of this Act. Moreover, any such  
7       document or record is barred from any future consideration.

8       However, if the department requests any additional document or record from the project  
9       owner after a review of the claim for refund, and the request is made after the applicable time  
10      period provided by this section has expired, the project owner has sixty days to provide the  
11      requested document or record. No document or record received after this sixty-day period may  
12      be considered by the department. Moreover, any such document or record is barred from any  
13      future consideration.

14      Section 10. The amounts withheld by the department in accordance with section 7 of this  
15      Act shall be retained until the project has been completed and the claimant has met all the  
16      conditions of this Act, at which time all sums retained shall be paid to claimant.

17      Section 11. If any claim has been fraudulently presented or supported as to any item in the  
18      claim, or if the claimant fails to meet all the conditions of this Act, then the claim may be  
19      rejected in its entirety and all sums previously refunded to the claimant shall constitute a debt  
20      to the state and a lien in favor of the state upon all property and rights to property whether real  
21      or personal belonging to the claimant and may be recovered in an action of debt.

22      Section 12. Any person aggrieved by the denial in whole or in part of a refund claimed under  
23      this Act, may within thirty days after service of the notice of such denial by the secretary,  
24      demand and be entitled to a hearing, upon notice, before the secretary. The hearing shall be

1 conducted pursuant to chapter 1-26.

2 Section 13. Any amount refunded pursuant to this Act for a project that is not completed  
3 within the time frames prescribed in this Act, including any extensions granted by the secretary,  
4 shall be returned to the state without interest. Any refunded amounts not returned pursuant to  
5 this section and all sums previously refunded to the claimant constitute a debt to the state and  
6 a lien in favor of the state upon all property and rights to property whether real or personal  
7 belonging to the claimant and may be recovered in an action of debt.

8 Section 14. Any person aggrieved by a decision of the secretary under this Act may, within  
9 thirty days of receipt of written notice of the secretary's decision, make written application to  
10 the secretary for a hearing to be conducted pursuant to chapter 1-26. Hearings are to be  
11 conducted and appeals taken pursuant to the provisions of chapters 1-26 and 1-26D. A copy of  
12 the hearing examiner's proposed decision, findings of fact, and conclusions of law shall be  
13 served on all parties when furnished to the secretary. If the secretary, pursuant to chapter 1-26D,  
14 accepts the final decision of the hearing examiner, no appeal from a final decision of the  
15 secretary upon any additional tax to be paid may be taken unless any amount ordered paid by  
16 the secretary is paid or a bond filed to insure payment of the amount. However, if the final  
17 decision of the secretary, pursuant to chapter 1-26D, rejects or modifies the decision of the  
18 hearing examiner regarding the amount due, an appeal may be taken without payment of the  
19 amount ordered to be paid and without filing of a bond. If the secretary's decision is affirmed  
20 by the circuit court, no appeal may be taken unless any amount ordered to be paid by the  
21 secretary is paid or a bond is filed to insure payment of such amount.

22 Section 15. The secretary shall promulgate rules, pursuant to chapter 1-26, concerning the  
23 procedures for filing refund claims and the requirements necessary to qualify for a refund.

24 Section 16. If the project is located on land that is included within the agreement area of a

1 tax collection agreement entered into by the state and an Indian tribe pursuant to chapter 10-  
2 12A, the department is only obligated to pay a percentage of the refund as required by this Act  
3 equal to the percentage of funds that the department retains pursuant to the terms of the tax  
4 collection agreement.

5 Section 17. The name of any person or entity that receives a refund or credit of sales, use,  
6 or contractors excise tax pursuant to this Act and the amount of any such refund or credit is  
7 public information and shall be available and open to public inspection as provided in § 1-27-1.

8 Section 18. That § 10-35-22 be amended to read as follows:

9 10-35-22. Any company requiring transmission lines or wind farm collector systems or both  
10 in South Dakota for a wind farm or a power generation facility as described in § 10-35-1.3, is  
11 eligible for a partial rebate of the tax paid under § 10-35-19. The company shall apply for the  
12 rebate on forms prescribed by the secretary. The total amount of tax rebated shall be no more  
13 than fifty percent of the cost of the transmission lines and wind farm collector systems in South  
14 Dakota.

15 The maximum rebate any company may receive in one year is ninety percent of the tax paid  
16 under § 10-35-19 for the first five years and fifty percent of the tax paid under § 10-35-19 for  
17 the next five years. The secretary shall determine when the wind farm is commercially  
18 operational. However, if the company received a refund pursuant to sections 1 to 17, inclusive,  
19 of this Act, the maximum rebate any company may receive in one year is fifteen percent of the  
20 tax paid under § 10-35-19 for the first five years and fifteen percent of the tax paid under  
21 § 10-35-19 for the next five years. No wind farm may receive a rebate under this section after  
22 this ten year period.

23 The secretary shall rebate the tax from the wind energy tax fund prior to the distribution of  
24 any money as provided in § 10-35-21. The secretary may provide a tax credit, in lieu of full

1 payment of the gross receipts tax, of up to eighty percent of the transmission rebate value that  
2 has been approved by the secretary. Any revenue in the wind energy tax fund after the rebates  
3 are paid shall be deposited in the property tax reduction fund.

4 Section 19. Whereas, this Act is necessary for the support of the state government and its  
5 existing public institutions, an emergency is hereby declared to exist, and this Act shall be in  
6 full force and effect from and after its passage and approval.